

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JERRY LEON DEES, JR.,

Plaintiff,

v.

**HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI
MOTOR AMERICA, INC.,**

Defendants.

**CIVIL ACTION NO.:
2:07-cv-00306-MHT-CSC**

**DEFENDANT’S MOTION FOR LEAVE OF COURT TO FILE MOTION IN LIMINE
TO EXCLUDE TESTIMONY OF PLAINTIFF’S EXPERT BASED ON
COURT’S SUMMARY JUDGMENT RULING**

Defendant Hyundai Motor Manufacturing Alabama, LLC (“HMMA”) files this motion for leave of Court to file an additional motion in limine to exclude the testimony of Robert Hall, CPA, Plaintiff’s accounting expert, based on the Court’s recent summary judgment ruling dismissing Plaintiff’s USERRA Termination claim. In support, Defendant states:

1. On May 21, 2008, this Court entered an Opinion (Doc. 186) and Judgment (Doc. 187), dismissing, among other things, Plaintiff’s USERRA termination claim.

2. Though Plaintiff’s USERRA “harassment” claim against Defendant survived Defendant’s motion for summary judgment, he cannot recover monetary relief based on this claim alone. The statute expressly limits recovery to lost wages, benefits, and equitable relief. 38 U.S.C. § 4323 (d) and (e).

3. Mr. Hall, Plaintiff's expert, appears to be proffered for the sole purpose to provide testimony regarding Plaintiff's lost wages and benefits. (See Doc. 172 at p. 1: "The Plaintiff has offered Hall as an expert witness with respect to Plaintiff's damages.").

4. In light of the Court's dismissal of Plaintiff's USERRA termination claim, Mr. Hall's testimony has no relevance. See F. R. Evid. 401. Further, such testimony, if allowed, could only confuse the jury and unfairly prejudice Defendant by creating the incorrect inference that Plaintiff may recover monetary damages with no legal basis for doing so related to the sole remaining USERRA claim in this lawsuit. See F. R. Evid. 403.

5. A copy of Defendant's Motion in Limine to Exclude Testimony of Plaintiff's Expert Based on Court's Summary Judgment Ruling is attached hereto as Exhibit A.

Respectfully submitted this the 23rd day of May, 2008.

/s/ J. Trent Scofield
Timothy A. Palmer (PAL-009)
J. Trent Scofield (SCO-024)
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Attorneys for Defendants Hyundai Motor
Manufacturing Alabama, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2008, I electronically filed the foregoing *Defendants' Motion for Leave of Court to File Motion in Limine to Exclude Testimony of Plaintiff's Expert Based on Court's Summary Judgment Ruling* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: W. Perry Hall, Vincent F. Kilborn, III, David Allen McDonald, Jeffrey Rayborn Sport, Timothy A. Palmer, T. Scott Kelly, and Matthew K. Johnson.

/s/ J. Trent Scofield

OF COUNSEL

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
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**HYUNDAI MOTOR MANUFACTURING
ALABAMA, LLC, and HYUNDAI
MOTOR AMERICA, INC.,**

Defendants.

**CIVIL ACTION NO.:
2:07-cv-00306-MHT-CSC**

**DEFENDANT’S MOTION IN LIMINE AND SUPPORTING AUTHORITIES TO
EXCLUDE TESTIMONY OF PLAINTIFF’S EXPERT BASED ON
COURT’S SUMMARY JUDGMENT RULING**

Defendant Hyundai Motor Manufacturing Alabama, LLC (“HMMA”) files this motion in limine to exclude the testimony of Robert Hall, CPA, Plaintiff’s accounting expert, based on the Court’s recent summary judgment ruling dismissing Plaintiff’s USERRA Termination claim. In support, Defendant states:¹

1. On May 21, 2008, this Court entered an Opinion (Doc. 186) and Judgment (Doc. 187), dismissing, among other things, Plaintiff’s USERRA termination claim.

2. Though Plaintiff’s USERRA “harassment” claim against Defendant survived Defendant’s motion for summary judgment, he cannot recover monetary relief based on this

¹ In order to streamline the pleadings in this action, Defendant has included the applicable authorities in support of this motion in limine. Defendant respectfully requests that this pleading be considered both as a motion and supporting brief.

claim alone. The statute expressly limits recovery to lost wages, benefits, and equitable relief. 38 U.S.C. § 4323 (d) and (e).

3. Mr. Hall, Plaintiff's expert, appears to be proffered for the sole purpose to provide testimony regarding Plaintiff's lost wages and benefits. (See Doc. 172 at p. 1: "The Plaintiff has offered Hall as an expert witness with respect to Plaintiff's damages.").

4. In light of the Court's dismissal of Plaintiff's USERRA termination claim, Mr. Hall's testimony has no relevance. See F. R. Evid. 401. Further, such testimony, if allowed, could only confuse the jury and unfairly prejudice Defendant by creating the incorrect inference that Plaintiff may recover monetary damages with no legal basis for doing so related to the sole remaining USERRA claim in this lawsuit. See F. R. Evid. 403.

5. In light of the foregoing, Mr. Hall should not be allowed to testify in connection with the trial of the remaining claims in this matter.

WHEREFORE, premises considered, HMMA respectfully requests that this Court enter an Order precluding Plaintiff's Expert Robert Hall, CPA, from testifying at the trial of this matter.

Respectfully submitted this the 23rd day of May, 2008.

/s/ J. Trent Scofield
Timothy A. Palmer (PAL-009)
J. Trent Scofield (SCO-024)
T. Scott Kelly (KEL-053)
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Attorneys for Defendants Hyundai Motor
Manufacturing Alabama, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May, 2008, I electronically filed the foregoing *Defendants' Motion in Limine and Supporting Authorities to Exclude Testimony of Plaintiff's Expert Based on Court's Summary Judgment Ruling* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: W. Perry Hall, Vincent F. Kilborn, III, David Allen McDonald, Jeffrey Rayborn Sport, Timothy A. Palmer, T. Scott Kelly, and Matthew K. Johnson.

/s/ J. Trent Scofield
OF COUNSEL

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